



Comptroller General
of the United States

Washington, D.C. 20548

153164

Decision

Matter Of: Sabbia Roofing, Inc.-Reconsideration

File No.: B-258591.2

Date: December 16, 1994

DECISION

Sabbia Roofing, Inc. requests reconsideration of our dismissal of its protests of the conduct of the Department of Veterans Affairs (VA) under solicitation No. 550-12-94, a proposed sole-source award to Sabbia under the Small Business Administration's (SBA) section 8(a) program, for a contract involving the reroofing of certain buildings. Sabbia protested the manner in which the VA had negotiated the contract, maintaining that the agency refused to allow certain legitimate costs to be included in the contract price. We dismissed the protest because our Office generally has no jurisdiction to review the SBA's stewardship of the small disadvantaged business contracting program. In so doing, we stated that we will review protests in this area only where there is a showing of possible fraud or bad faith on the part of government officials, or that regulations may have been violated. See 4 C.F.R. § 21.3(m)(4) (1994).

On reconsideration, Sabbia contends that the VA negotiated in bad faith, primarily by not allowing for appropriate costs in the government estimate, and improperly terminated the negotiations.

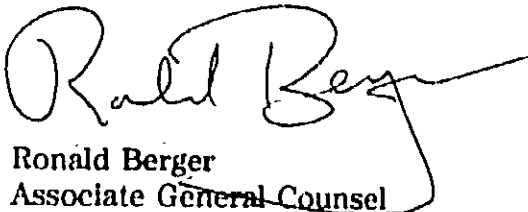
The protester's submissions indicate that the VA and the protester had disagreed on what this project should cost, and that ultimately the VA reported to the SBA that the funds it had available were significantly less than what Sabbia was seeking and less than what a new estimate prepared for the VA indicated the project should cost.

The documents submitted by the protester do not suggest the reasonable likelihood that the VA acted in bad faith here. While the VA's initial estimate may have been incorrect and while there is obvious disagreement about what costs should be associated with this project, such circumstances do not indicate that the VA acted in bad faith, *i.e.*, with the deliberate intention of harming the protester. The agency has the responsibility to enter into contracts that are not excessively priced, do not exceed the funds available, and that reflect the best interests of the government. The VA's actions appear to be consistent with that responsibility.

In this regard, we point out that section 8(a) contracts are to be entered into "upon such terms and conditions as may be agreed upon," 15 U.S.C. § 637(a) (1988). It is not our role to arbitrate the 8(a) negotiation process. See Quality Support, Inc.-Recon., B-254635.3, Mar. 17, 1994, 94-1 CPD ¶ 233. Rather, it is the SBA that is expected to act on the 8(a) firm's behalf when such action is warranted.

As for the agency's canceling the negotiations, an agency may properly cancel negotiations where the proposed or anticipated costs exceed the funds available. See Health Servs. Marketing and Development Corp., B-241830, Mar. 5, 1991, 91-1 CPD ¶ 247.

The dismissal is affirmed.



Ronald Berger
Associate General Counsel